

# **FOSTER CARE AND ADOPTION PROCEDURES AND PRACTICE GUIDELINES FOR LESOTHO**

**MINISTRY OF SOCIAL DEVELOPMENT  
GOVERNMENT OF LESOTHO**

**August 2012**

## Foreword

This document contains the Procedures and Practice Guidelines for Foster Care and Adoption in Lesotho. It is complementary to the country's Foster Care and Adoption Policy, a framework meant to facilitate the smooth and effective implementation of Part VIII of the 2011 Children's Protection and Welfare Act bearing the title "Fosterage and Adoption". These Procedures and Practice Guidelines are intended to create a common platform and also to ensure the highest ethical standards are practised in delivering these two forms of alternative care.

The Ministry of Social Development (formerly Department of Social Welfare) has realized that policy and legal frameworks cannot on their own bring improvement in the delivery of foster care and adoption services. From experiences of other countries, Lesotho has learned that the delivery of quality foster care and adoption practice in addition requires standardized procedures and practice guidelines which will spell out the ethics and norms that must underlie action in the delivery of foster care and adoption services on the one hand and, the mechanisms for the practical implementation of these ethics on the other. The Ministry of Social Development of the Government of Lesotho wishes to reaffirm its conviction that permanent substitute family care is not the absolute solution. Rather, preservation of family stability and the prevention of child neglect and abandonment must be the first concern of governments and civil societies. As a matter of principle, all efforts regarding delivery of foster care and adoption services should be directed to ensuring that children are raised by their own families. But where this fails, the two services become useful alternative interventions.

While the Procedures and Practice Guidelines in this document appear to be sufficiently comprehensive, their full meaning can only be appreciated if they are contextualized within relevant international instruments. The main instruments found relevant to the development of Procedures and Practice Guidelines for Lesotho are the following:

- The **Convention on the Rights of the Child** (adopted by the General Assembly, 1989) which recognizes the exceptional vulnerability of children and proclaims that childhood is entitled to special care and assistance. The Preamble and several articles of the Convention emphasize the importance of the family and the need to create an environment that is conducive to children's healthy growth and development.
- The UN (**United Nations**) **Declaration on Social and Legal Principles relating to the Protection and Welfare of Children with special reference to Foster Placement and Adoption Nationally and Internationally** (passed by the General Assembly, 1986) and the **Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption** are other international mandates which aim at safeguarding the rights of children for whom family life is ensured through foster care or adoption.

The Hague Convention of 1993 calls for the establishment of a **Contracting Authority** in both receiving States and States of origin, which will accredit organisations working in the field of intercountry adoption. It creates a framework for cooperation between States and provides for safeguards and procedures to ensure that intercountry adoptions take place in the best interests of the child and with respect for his/her fundamental rights.

- The **Guidelines for Practice on National and Intercountry Adoption and Foster Family Care** presented and published in 1992 by the International Social Service, (ISS), Geneva in collaboration with the Adoption Centre, Sweden.

The development of the Foster Care and Adoption Procedures and Practice Guidelines document for Lesotho has, in addition to the above instruments, involved the examination of current domestic practices and the assumptions on which substitute family care is based. The process of their development also involved surveying available literature and standards as well as adopting the positive experiences and good practices from both developed and developing countries. The style of presentation used and a substantial amount of content in the document has been adopted from the publication by the ISS (Geneva) and the Adoption Centre (Sweden). The draft was widely distributed and also subjected to critical review by different stakeholders.

The Procedures and Practice Guidelines are written in a simple and user-friendly style and, while they were developed keeping the practitioner first in mind, they provide important information regarding the rights including obligations of foster care parents and institutions, adoptive parents and the concerned children. They are a step-by-step guide for ensuring that quality services are rendered for children in need of foster care and adoption. They are also based on societal values which, as we are all aware, are constantly changing. As society and community standards rise, standards of welfare are bound to rise also. Thus, amendments may be necessary in the future to ensure current relevance.

If they serve to improve the quality of service for children in need of substitute family care, then the effort made by all in creating this document will be truly justified. As the Minister of Social Development, I believe all concerned practitioners and other concerned parties will enjoy using these Procedures and Practice Guidelines.

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**Minister of Social Development**

## Acknowledgements

### The Ministry of Social Development of the Government of Lesotho

is proud to be associated with the publication of the Procedures and Practice Guidelines for Foster Care and Adoption and wishes to acknowledge their profound gratitude to all those associated with the development of this important document.

They include:

- \* **Members of the Ministry of Social Development Technical Working Group** for overseeing the process that has led to the development of these Procedures and Practice Guidelines they were Mrs Mantsenki Mphalane, Ms Maeaea Mokhethi, Ms Retselisitsoe Tsuinyane, Mr. Motlatsi Pelesa, Ms Masealimo Marumo, Mrs Masello Sello and Ms Mankuebe Khiba .
  - \* **Dr. Itumeleng Kimane** for contributing the knowledge and experience she has accumulated over the years in the areas of child rights, child protection, policy development and legal reform including foster care and adoption.
  - \* **Representatives of Adoptions Agencies of countries** (Canada, The Netherlands, Sweden and the USA) that receive adopted children from Lesotho.
  - \* **Representatives of selected care facilities; legal practitioners, Honourable Judges** of the High Court, **legal Practitioners, District Child Welfare Officers, Public Officers from Line Ministries, Representatives of selected care facilities, Foster parents and Adoptive Parents** for contributing their experiences and knowledge.
  - \* **The World Bank** for funding this effort.
  - \* The **Office of Adoptions in the Ministry of Social Development** in particular Mrs Maeaea Mokhethi for handling all logistics related to undertaking an exercise of this magnitude.
  - \* **Ms Sefora Makepe-Tsiu** for patiently reading and providing comments on the drafts of the Procedures and Practice Guidelines document.
  - \* **Participants at the stakeholders' validation workshops** for their comments on the draft Procedures and Practice Guidelines.
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**Principal Secretary, Ministry of Social Development**

## Table of Contents

Foreword.....	i
Acknowledgements.....	iii
Chapter 1.....	1
1. THE NEED FOR PROCEDURES AND PRACTICE GUIDELINES .....	1
2. PREAMBLE .....	1
3. GUIDING PRINCIPLES .....	2
Chapter 2.....	4
PROCEDURES AND PRACTICE GUIDELINES FOR FOSTER CARE .....	4
DEFINITION OF TERMS .....	4
1. BIOLOGICAL PARENT(S).....	5
2. CHILD IN FOSTER CARE .....	6
3. FOSTER FAMILY AND INSTITUTIONAL FOSTER CARE.....	8
3. FOSTER FAMILY AND INSTITUTIONAL FOSTER CARE.....	<b>Error! Bookmark not defined.</b>
4. COMPETENT AUTHORITIES AND AGENCIES.....	10
5. CHILD-STUDY.....	13
6. FOSTER FAMILY HOME-STUDY .....	14
Chapter 3.....	16
PROCEDURES AND PRACTICE GUIDELINES FOR NATIONAL & .....	16
INTERCOUNTRY ADOPTION.....	16
DEFINITION OF TERMS .....	16
1. BIOLOGICAL PARENT(S) .....	16
2. THE CHILD.....	19
3. ADOPTIVE PARENTS.....	23
4. COMPETENT AUTHORITIES AND ACCREDITED BODIES.....	25
5. CHILD STUDY .....	30
6. ADOPTIVE FAMILY HOME-STUDY.....	30

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# Chapter 1

## INTRODUCTION

### 1. THE NEED FOR PROCEDURES AND PRACTICE GUIDELINES

A consistent and high-quality level of foster care and adoption as an alternative substitute care for a child deprived of his/her biological family is both necessary and desirable for all countries including Lesotho.

While foster family care ensures substitute family care for a child during a temporary family crisis with the goal of reuniting child with family when the situation permits so as to prevent family disintegration, adoption offers permanent substitute family care for a child and establishes a legal parent-child relationship.

These procedures and guidelines for practice are drafted in line with internationally recognised norms and standards for adherence and application. They have also taken into account domestic practices currently used in Lesotho for delivering foster care and adoption services. They are meant to encourage and promote the well-being of children for whom these services are destined. They should also prevent or deter the sale, trafficking and abduction of children.

The Procedures and Practice Guidelines should lead to the upgrading of existing services, development of training manuals and serve as a guide to competent authorities, the Ministry of Social Development, the Lesotho Intercountry Adoption Authority, the accredited local adoption and foster care agencies and any other service providers and stakeholders involved in operating and delivering these services.

Monitoring, assessment and evaluation of these services shall also be facilitated. As these procedures and practice guidelines define optimal level of performance or practice, they are expected to influence policy and practice to achieve ever-increasing standards of excellence.

### 2. PREAMBLE

These Procedures and Practice Guidelines endorse the ethical principles as given in:

- UN Convention on the Rights of the Child.
- African Charter on the Rights and Welfare of the Child.
- UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.
- Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

These Procedures and Guidelines were scrutinized by the Technical Working Group of the Ministry of Social Development. They were also validated through stakeholders' workshops and dialogues with special interest groups in different regions of the country.

These composite Procedures and Practice Guidelines for Foster Care and Adoption in Lesotho have been inspired by the International Council on Social Welfare (ICSW) Guidelines on Intercountry Adoption which were first formulated in 1979 and developed further in 1994 and 1995 under the auspices of both the ICSW and the International Foster Care Organization (IFCO). The Guidelines referred to above came to be dedicated to children all over the world who may need alternative family care to ensure that they receive the best of services. They have therefore been found applicable and pertinent for children in Lesotho. They are also considered as representing good practices in the area of foster care and adoption.

### 3. GUIDING PRINCIPLES

*"Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."*

*UN-Convention on the Rights of the Child, Preamble*

- 3.1 Any measure taken for the protection of a child must be guided by the best interests of the child and for upholding the rights of the child.
- 3.2 Every child has a right to grow up in a family.
- 3.3 The priority for a child is to be cared for by his/her biological parent(s).
- 3.4 The Government of Lesotho and Basotho nation commit to providing families the possibility and encouragement to care for their own children. This shall be done through policies and programs formulated in accordance with principles of equity and compassion.
- 3.5 If a child cannot be cared for by his/her own biological parent(s), the Ministry responsible for child protection, currently being the Ministry of Social Development, shall consider all alternatives for permanent care within the child's extended family.
- 3.6 Adoption of a child outside his/her own family shall be considered only if no appropriate placement or adoption within the extended family is possible.
- 3.7 When biological parent(s) and the extended family of origin do not meet conditions which would guarantee the full and harmonious development of a child, the Ministry responsible for child welfare and protection must seek alternate solutions. Offering a permanent substitute family to a child through adoption or long term foster family care when necessitated by circumstances shall prevail over care in an institution such as a foster home.
- 3.8 Foster family care as a substitute care practice shall be considered only if the child is in need of alternative care for a temporary period.

Opportunities for ongoing contact with the birth family must be planned with the possibility of the child being eventually reunited with his/her family.

- 3.9 Foster family care though temporary in nature may continue to be provided until adulthood if necessary. This shall be based on a periodic review of the placement if no long-term solution is available.
- 3.10 As a priority, the child shall be adopted within Lesotho. Intercountry adoption can be considered as an alternative only after having ensured that a satisfactory solution for the child cannot be found in his/her country of origin.
- 3.11 Stability, continuity and permanency of relationships promote a child's growth and development. The period of childhood and adolescence being of utmost importance for the development of a child's personality, all procedures must be completed and decisions taken without any unnecessary delay as the child needs the opportunities to establish lifetime relationships with caring adult models.
- 3.12 The child, biological parent(s), the adoptive family and the foster family have a right to confidentiality. The mandated authorities and accredited foster care and adoption agencies shall treat all case records as classified documents. Access to recorded information by any party shall be in accordance with the laws of Lesotho.
- 3.13 The adoption of children shall not be a source of improper financial or other gain. Abuse, sale and trafficking in children shall lead to severe prosecution.
- 3.14 In all procedures related to foster care and adoption, it is important that the highest standards of practice are followed within the accepted principles.

## PROCEDURES AND PRACTICE GUIDELINES FOR FOSTER CARE

These procedures and practice guidelines shall serve to:

- \* Reduce the risk in out-of-home placement by building the strength of foster families, foster institutions and foster care agencies to protect the health, safety, ethnic heritage and dignity of children placed in their care.

Foster family care and institutional foster care are considered the least restrictive and most nurturing out-of-home placement for children in need of temporary substitute family care.

- \* **Foster Family Care** - implies alternative family care. The period of care can vary in order to meet the specific needs of a child. It could be pre-adoption care; weekend care or vacation care; respite care for handicapped children or care of a group of children in one family or long-term care in a place of safety for a child who cannot be adopted.
- \* **Foster Family** - adults who are licensed by the Ministry of Social Development to provide temporary physical care, nurture and emotional support in their home to children placed with them for planned, goal-directed services which will support the ultimate permanent life plan of a child.
- \* **Foster Institution** – means an institution or care facility authorized to foster children for a specified period of time under the supervision of the Ministry of Social Development.
- \* **Local Foster Care Agency** – refers to a non-governmental organization authorized by the Government of Lesotho to deliver foster care services under the supervision of the Ministry of Social Development which is responsible for child protection.
- \* **Foster parent** – means a person, not being a parent of a child, who undertakes the responsibility of providing care, love, accommodation, safety, security and upbringing of a child with or without reward.
- \* **Biological Parent(s)** in the context means both parents if they are together or the mother or father if they are alone.
- \* **District Support Team** – is a complementary partnership between the foster care worker and the foster families or homes and shall include as needed other staff members and professionals from fields such as psychology, social work, child and youth development, health, education and law. The multidisciplinary support team, if such a service is available, shall devise and monitor a plan for each child's care.

## 1. BIOLOGICAL PARENT(S)

*"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents:*

*UN Convention on the Rights of the Child, Art.7.1*

### **1.1 Right to personal dignity and respect**

Biological parent(s) have the right to personal dignity and respect and to be informed of their rights and how to exercise them. They should concomitantly respect the rights of others.

### **1.2 Planning and participation in child's placement**

Biological parent(s) shall have:

- a) The responsibility for planning their child's care;
- b) The right to participate as a member of the district support team;
- c) The obligation to follow through on any commitments made with the child and social services, foster family or foster institution and the district support team.
- d) The right to receive counselling and be directed to such resources that may be available to facilitate their child's return.

### **1.3 Background information**

The biological parent(s) should provide information about their own and the child's background, medical history and developmental history.

### **1.4 Reunification and reintegration**

The biological parent(s) have the right to have their child returned from placement and reintegrated into the family:

- a) If and when the family conditions return to normalcy;
- b) If the placement was made at their own request.

### **1.5 Significant events**

The biological parent(s) have the right to be informed of any significant events or developments in the child's life.

### **1.6 Religious and ethno-cultural upbringing**

The biological parent(s) have the right to state a preference for the religious/language/ethno-cultural upbringing of the child.

### 1.7 Grievances

The biological family has the right to voice opinions, thoughts, feelings and beliefs without retribution by use of the established grievance process.

### 1.8 Termination of parental rights

Termination of parental rights may only be initiated after assessment of the biological parent(s) ability to continue productive involvement in their child's life.

Termination of such rights shall become enforceable only when the High Court has issued an order to that effect.

*"A child temporarily or permanently deprived of his or her family environment or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."*

*Un Convention on the rights of the Child, Art. 20.1*

### 2.1 Participation of the child in the plan of care

Prior to the commencement or finalization of any change in placement, the child concerned shall be consulted in a manner appropriate to his/her evolving capacity i.e. age and level of maturity.

### 2.2 Contact with biological family

The child in foster family or institutional foster care shall maintain contact with the members of the biological family unless otherwise indicated.

### 2.3 Child's developmental needs

The child in foster family or institutional foster care shall be provided:

- a) Routine preventive and emergency medical and dental care and nutritionally balanced meals;
- b) Well fitting clean clothing appropriate to the season and to the child's age, sex, activities and individual needs;
- c) Formal and/or non - formal education in accordance with his/her abilities and the statutes of the Lesotho;
- d) Support to satisfy spiritual needs in accordance with the biological family's wishes whenever possible;

- e) Access to supportive services and psychological and emotional support, especially for the development of his/her coping skills in relation to healthy sexual behaviour;
- f) Opportunities to develop in his/her own ethno-cultural environment;
- g) Parental care, love, safety and security.

## **2.4 Child-study report**

Foster family or institutional foster care is a personalized care plan for a child and must be determined on the basis of a study of his/her psychological, social, medical and legal status and that of his/her biological parent(s).

The child-study shall be prepared by professional workers or other experienced and qualified personnel of the Ministry of social Development or local foster care agency.

The report shall:

- a) Form a basis for matching with prospective foster parent(s) and assist them in making a decision;
- b) Assist with the child's need to know about his/her biological parent(s) at the appropriate time;
- c) Support the foster parent(s) understanding of the child and have relevant information about him/her including ethnic, socio-cultural and religious upbringing.

The child-study, in the form of a detailed report shall provide the information as presented in section 5 of this Chapter.

## **2.5 Placement of twins and siblings**

Twins and siblings shall not be separated by a foster placement except under extraordinary circumstances. If for some reason they have been separated, arrangements shall be made for them to remain in contact.

## **2.6 Pre-placement preparation for children**

When children are matched for foster family care or institutional foster care, they shall be appropriately prepared for the actual placement depending on their evolving capacity and level of maturity which shall include:

- a) Counselling and support to enable the child to comprehend the concept of foster family or institutional foster care;

### 3. FOSTER FAMILY AND INSTITUTIONAL FOSTER CARE

- b) Adequate introduction to the prospective foster parent(s) and their way of life through meetings, visits, photographs, video, letters, etc.

#### **2.7 Life Book**

The child has the right to his/her life story. As far as possible, a Life Book, which may be presented in many forms, describing the background and other relevant information on the child should be prepared by the responsible social worker and accompany him/her on placement.

#### **2.8 Recreation and social activities**

Play and celebration of significant life events must be encouraged as an important aspect of the child's development.

#### **2.9 Preparation for independent living**

The child in foster care has the right to be encouraged to acquire appropriate skills for productive living.

#### **2.10 Search for origins**

The child has a right to his/her identity, in particular to information about his/her parentage. The Ministry of Social Development and local foster care agencies shall ensure the satisfaction of this right and offer psycho-social services to all parties concerned when a search for origins is undertaken.

### **3.1 Approval**

Approval of prospective foster families or foster institutions for the placement of a child shall be the responsibility of the Ministry of Social Development and/or a responsible local foster care agency.

### **3.2 Family home-study**

A foster family home-study report must be in the community where the applicant(s) are residing and shall be prepared by a professional foster care worker of the Ministry of Social Development or a local foster care agency to provide the following information:

- a) Their age, means of living, marital status, race, religious preference, sexual orientation, physical or disabling condition, motivation and capacity to foster-care, their childhood experiences and upbringing, interpersonal family relationships and appropriate sanctions against any charges of criminal offence and child abuse,

b) The home-study in the form of a detailed report shall provide at the minimum, information as presented in section 6.

### **3.3 Rights**

The foster family has the right to be treated with personal dignity and respect, to be considered first as a family and secondly as a service provider and to be informed of their rights and how to exercise them.

### **3.4 Fostering agreement**

The foster family or foster institution will countersign a fostering agreement prior to the time a child is placed with it. This agreement should include the rights and responsibilities of the foster family or foster institution and the Ministry of Social Development or a foster care agency concerned.

### **3.5 Placement agreement**

The foster family or foster institution will countersign a placement agreement prior to the placement of each child in their care.

### **3.6 Information of child**

The foster family or foster institution should receive from the Ministry of Social Development or local foster care agency information that pertains to the psychological, emotional or physical history of the child and his/her family.

### **3.7 Emergency placements**

Emergency placements accepted by the foster family or foster institution must be accompanied by an agreement in writing from the Ministry of Social Development or local foster care agency to provide all necessary and regular documentation within a specified time after placement.

### **3.8 Participation in case plan**

The foster family or foster institution should participate in the devising of a written case plan for each child in care. This should be reviewed at regular intervals and be directed towards reunification of the child with his/her family or for making alternative plans for permanency.

### **3.9 Sharing information on the child**

Foster families or foster institutions should work cooperatively with the Ministry of Social Development or local foster care agency representatives in planning for the services to be provided to each

child. They should be encouraged to share all information related to the child's progress or problems, if any.

### **3.10 Fostering relationship with biological family**

Foster families or foster institutions should facilitate communication of the child with his/her biological family in accordance with the case plan and in cooperation with the Ministry of Social Development or local foster care agency.

### **3.11 Runaway or injury**

In the case of injury to the child or the child becoming a runaway, the foster family or foster institution shall report immediately to the Ministry of Social Development or local foster care agency and plan appropriate action to be taken.

*"State Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a period review of the treatment provided to the child and all other circumstances relevant to his or her placement."*

*UN Convention on the Rights of the Child, Art.25*

## **4.1 Accreditation**

Foster care arrangements should be made only through the Ministry of Social Development or accredited local foster care agencies.

## **4.2 Policy and procedures manual**

The Ministry of Social Development or local foster care agency shall develop, maintain, update and employ a written policy and procedures manual.

## **4.3 Alternatives to keep the child in biological family**

The Ministry of Social Development or local foster care agency shall satisfy itself that all alternatives to keep the child in his/her own family have been explored and that foster care is the optimal choice of care for the child.

## **4.4 Child study**

Prior to a placement, a child-study report containing comprehensive information about the child's status and needs shall be prepared by the a social worker or other qualified professional in the Ministry of Social Development or local foster care agency as presented in section 5 of this Chapter.

#### **4.5 Recruiting, licensing and preparation of home-study**

The Ministry of Social Development or local foster care agency shall recruit, screen, orient and train foster families and foster institutions. The licensing of foster families and foster institutions shall comply with established procedures. A foster family home-study shall be prepared for this purpose by the Ministry of Social Development or local foster care or agency as presented in section 6 of this Chapter.

#### **4.6 Matching**

The Ministry of Social Development shall devise a system to:

- a) Assess the needs of the child and that of the foster family or foster institution;
- b) Match the needs of the child with the abilities and resources of the foster family or foster institution particularly in cases of children with special needs;
- c) Prepare both the child and the foster family or foster institution for the placement.

#### **4.7 Composition of the matching board**

The matching referred to under sub-section 4.6 above shall be the responsibility of a legally constituted matching board.

Membership of the matching board shall be as spelt out in the regulations of the CPWA 2011.

#### **4.8 District Support Team**

The Ministry of Social Development or local foster care agency shall utilize the services of a district support team to ensure the accomplishment of the goals of the placement.

#### **4.9 Training and case load**

Foster care workers shall be qualified, trained and competent individuals who will receive continuous training and supervision from competent supervisors. The size of the case load for workers should be determined on the basis of the level of service and support required to meet the assessed needs of each child.

#### **4.10 Foster care agreement**

The Ministry of Social Development or local foster care agency shall devise and have countersigned by the foster family or foster institution, a foster care agreement as a requirement for receiving placements. This agreement shall include the rights and responsibilities of the foster

family or home, the biological family, the Ministry of Social Development or the agencies involved.

#### **4.11 Placement limitations**

The Ministry of Social Development or local foster care agency shall establish a limit upon the number of children placed in one foster home at one time. Twins and siblings will be placed together in a foster institution.

#### **4.12 Contents of a foster care placement agreement**

The Ministry of Social Development or local foster care agency will devise a placement agreement regarding placement of each child in that foster institution. This agreement shall include the number of supervisory visits to be made by the case worker and the forwarding of stipulated reports related to the child's welfare and progress.

#### **4.13 Preservation of family ties**

The Ministry of Social Development or local foster care agency shall support the child's contact with the biological family whenever possible and when conducive to the child's best interest.

#### **4.14 Permanency planning**

The Ministry of Social Development or foster care agency shall begin permanency planning for the child soon after the commencement of the placement.

#### **4.15 Runaway, neglect and abuse of foster child**

Reports of neglect and abuse of a foster child by a foster family or foster institution or, of the child becoming a runaway shall be immediately investigated in conformity with the existing governmental statutes and local foster care agency policies.

#### **4.16 Periodic mutual review after a child is placed on foster care**

The Ministry of Social Development or local foster care agency shall develop a procedure for participation with the foster family or foster institution in a periodic mutual review. This review will evaluate the strengths and needs of the foster family or foster institution for caring for the child and the relationship between the Ministry of Social Development or local foster care agency and the foster family or foster institution.

#### **4.17 Recognition of contribution of foster family of foster institutions**

The Ministry of Social Development or local foster care agency shall develop a policy to recognize the positive contributions made by foster families and foster institution to the field of child welfare as determined by Government and responsible Ministry from time to time. This can take the form of tax rebates, special purpose grants (e.g. to cover salaries of qualified staff, development funds), performance-based awards, subvention, service related exemptions, etc.

#### **4.18 Closure of foster institutions**

The Ministry of Social Development or local foster care agency shall develop written policies and procedures for the closure of foster institutions under a variety of circumstances. These will include the voluntary withdrawal of service by foster families as well as an appeal and review procedure against termination orders.

#### **4.19 Maintaining case records**

The Ministry of Social Development and/or local foster care agency shall develop individual case records which shall include periodic narrative reports relating to the child's and the biological family's involvement with foster care.

The detailed report on the child shall include, as far as possible, the following information on his/her background and needs:

1. Identifying information supported by documents where possible;
2. Child's recent photograph;
3. Child's antecedents including:
  - \* Given names and by whom they were given;
  - \* Detailed chronological placement history with dates and reasons for relocation;
4. Explicit reasons why and for how long the child requires foster family or institutional foster care;
5. Antecedents of the family of origin which would include:
  - \* Information about biological parents, siblings and extended family;
  - \* Family situation;
  - \* Race/ethics background and religion;
  - \* Health history;

## 6. FOSTER FAMILY HOME-STUDY

\* Relationship with community and leadership of the community

6. Physical, intellectual and emotional status of the child;
7. Medical report on the child's health status and health history (including period of hospitalization) to be appended;
8. Present environment, category of care (with birth family, foster home, institution etc.), relationships, routines, habits and behaviours. As far as possible this information should be included in the Life Book;
9. Opinion of the child, having regard to his/her age and degree of maturity;
10. Assessment by multidisciplinary support team of professionals (as far as possible) and their reasons for suggesting foster family or institutional foster care and the qualifications of a family most suitable to meet this child's needs.

The prospective foster family or foster home will participate in the preparation of the home-study which at a minimum would include the following:

1. Identifying information supported by necessary documents such as marriage, divorce, birth certificates, etc.;
2. Antecedents of the prospective foster family including:
  - \* Their own childhood experiences, upbringing and interpersonal relationships;
  - \* Information on other members of the family;
  - \* Attitude of children and other relatives of the foster family towards the foster care plan;
  - \* Social, ethno-cultural, linguistic and religious identity of the prospective foster family;
  - \* Sanctions against any charges of criminal offence and child abuse.
3. Recent photograph of the family;
4. Physical, intellectual, emotional and educational status of prospective foster family.
5. Medical report on the family's health status and health history to be appended;
6. Employment and financial assets;
7. Accommodation and community environment;
8. Motivation to provide foster family care;
9. Ability to provide nurturing care and supervision in an atmosphere of affection and moral and material security;

10. Statement of positive reference and emotional support from relatives, friends, community;
11. Assessment by a multidisciplinary district support team of professional (as far as possible) stating:
  - \* Their reasons for approving the prospective foster parent(s);

Details of the child (age, sex, acceptance of siblings, special needs child etc.) they would prefer to and are capable of parenting

DEFINITION OF TERMS  
Chapter 3

## PROCEDURES AND PRACTICE GUIDELINES FOR NATIONAL & INTERCOUNTRY ADOPTION

The guidelines outlined in this chapter shall serve to:

- \* Improve delivery of adoption services in the country as well as to contribute to the building of a strong system and mechanisms for rendering such services as well as promoting ethical standards and practices that protects the rights and dignity of children placed in such care.

Adoption offers permanent substitute family care for a child and establishes a legal parent-child relationship which provides for the well-being of a child in a comprehensive and holistic manner that targeted at his/her physical, psychological, social, spiritual, health and ethno-cultural development.

- \* **Local Adoption agency** – refers to a non-governmental organization authorized and accredited by the Government of Lesotho or, in the case of intercountry adoption, by the Lesotho Intercountry Adoption Authority to deliver adoption services under the supervision of the Ministry of Social Development which is responsible for child protection.
- \* **Relinquishment** – refers to parent(s') decision to give up their position, power and rights over a child and to let him/her to be adopted by someone or another family.
- \* **Competent authority** – in this context is used to refer to a body or organization mandated or given the authority to deliver adoption services.
- \* **Accreditation** – means having reached acceptable standard and therefore being given official approval or authorization by a competent authority to deliver adoption services.

*"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents."*

*UN Convention on the Rights of the Child, Preamble*

### **1.1 Biological parent(s)**

Biological parent in this context means both parents if they are together or the mother or father if they are single.

### **1.2 Psycho-social services for biological parents**

Biological parent(s) shall be offered psycho-social services by professionally qualified social workers or other experienced social service professionals recognized under the Lesotho Association of Social Workers. Such services shall be provided before and after the birth of the child if they are considering placing the child in adoption.

### **1.3 Support services to parent(s)**

Psycho-social services shall be made available to assist the parent(s) in their consideration of various alternate plans for the care of their child. These shall include:

- a) Not being coerced into making any commitment to an adoption plan prior to the birth of the child;
- b) Having sufficient time which shall be determined by the regulations of the law that governs adoptions in Lesotho to reconsider their decision to relinquish a child for adoption before that decision becomes irrevocable, such decision shall take the best interests of the child as paramount;
- c) Being given enough information and guidance to make an informed decision about whether or not to relinquish a child for adoption;
- d) Being provided adequate services and directed to such resources as to enable fulfilment of their parental responsibilities should they decide to bring up their child themselves;
- e) Being provided counselling and support services after the relinquishment of their child for adoption.

### **1.4 Implication of relinquishment**

Parent(s) who decide to relinquish their child for adoption shall be helped to understand all the implications and made aware of the fact that:

- a) In the majority of cases adoption means the severance of all legal social and personal ties with the child;
- b) Parent(s) who have decided to relinquish their child cannot withdraw after the Ministry of Social Development has issued a certificate declaring a child as available for adoption;

- c) Their child may be placed in adoption within Lesotho or in intercountry adoption. Moreover, intercountry adoption would imply that the child will be brought up in another country;
- d) Some countries practice open adoption and this may mean the possibility of future communication with the child at their or the child's initiative.

### **1.5 Legal requirements**

It is the responsibility of the Ministry of Social Development, Lesotho Intercountry Adoptions Authority and accredited local adoption agency to ensure that when the parent(s) relinquish a child for adoption, all of the legal requirements are met.

### **1.6 Antecedents**

Parent(s) should provide information about their own background (not necessarily identity) and medical history and the child's background, health and development. They must be made aware that it is within the child's rights to have access to such information, which may be necessary for the child's future well-being.

### **1.7 Parental preferences**

If the parent(s) state any preferences regarding the upbringing of the child, these wishes shall be respected as far as possible while making a placement decision but the best interests of the child will be the paramount consideration.

### **1.8 Unknown parentage and period of search**

If the parent(s) are unknown, the Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall make every effort to ensure that the parent(s) has been traced.

- \* The Child and Gender Protection Unit of the Lesotho Police Service shall be charged with the responsibility of searching for parent(s).
- \* The Unit shall at the end of the search produce a written report on its findings and present this to the Ministry of Social Development or local adoption agency concerned.

The period of search for the biological family shall be guided by the relevant laws of Lesotho and any other relevant regulations of the 2011 CPWA. Only thereafter should adoption formalities be initiated.

*"A child temporarily or permanently deprived of his or her family environment, or in whose own interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."*

*UN Convention on the Rights of the Child, Art. 20.1*

### **2.1 Adoption – a child welfare service**

The primary purpose of adoption is to provide a child with a family and a home to call his/her own and not to provide a child for a family.

### **2.2 Child-study report**

Adoption is a personalized life plan for a child and must be determined on the basis of a study of his/her psychological, social, spiritual, medical, ethno-cultural and legal status and that of his/her family of origin, whenever possible.

The child-study shall be prepared by professionally qualified social workers or other experienced social service professionals recognized under the Lesotho Association of Social Workers.

The report shall:

- a) Form a basis for matching with prospective adopter(s) and assist them in making a decision.
- b) Assist with the child's need to know about his/her biological family at the appropriate time;
- c) Support the adoptive parent(s) understanding of the child and have relevant information about him/her including ethnic, socio-cultural and religious upbringing.

The child-study, in the form of a detailed report, shall provide information as given in section 5 of this Chapter.

### **2.3 Placement of twins and siblings**

Twins and siblings shall not be separated by an adoption placement except under extraordinary circumstances. If for some reason they have been separated, the Ministry of Social Development or responsible local adoption agency must ensure that arrangements are for them to remain in contact.

## **2.4 Child's Participation in adoption plan**

Before any adoption placement is finalized, the child concerned shall be consulted in a manner appropriate to his/her evolving capacity in relation to age and level of maturity.

## **2.5 Pre-placement preparation for children**

When children, particularly older children, are matched for adoption, they shall be appropriately prepared for the actual adoption placement which shall include:

- a) Counselling and support to enable the child to comprehend the concept of adoption;
- b) Adequate introduction to the prospective adoptive parent(s) and their way of life through photographs, video, letters etc.
- c) Personal contact with the prospective adoptive parent(s) if possible and appropriate support to facilitate adjustment.

## **2.6 Legal guardian**

Before the legal adoption is finalised, the child shall have an authorized guardian.

## **2.7 Status of adopted child**

The child shall be given the same legal status and rights of inheritance as if he/she were born to the adoptive parent(s).

## **2.8 Birth registration**

The adopted child shall have a birth registration certificate or its equivalent with names nominated by adoptive parents when the legal adoption process is completed. An original copy of the certificate must be provided to the adoptive parents and a copy retained in the records maintained by the Ministry of Social Development and another copy in the records of the local adoption agency concerned.

Special arrangements shall be made with the Civil Registration Department in the Ministry of Home Affairs to ensure that birth certificates for adoptees are issued on time. This shall entail nomination of a specific office to attend to applications relating to adoption matters.

Any request for a birth certificate by the Ministry of Social Development or a local adoption agency shall be accompanied by the following documents:

- (a) Letter from the Ministry of Social Development in support of the request;

- (b) Identity documents of the officer of the Ministry of Social Development or of the local adoption agency representative presenting the application;
- (c) Child's report to the High Court;
- (d) Adoption court order;
- (e) Police clearance;
- (f) Original birth certificate of the child; and
- (g) Identity document of adoptive parent(s).

## **2.9 Acquisition of Passports for adopted child – in the case of intercountry adoption**

Before an intercountry adoption is proposed, the Lesotho Intercountry Adoption Authority or accredited local adoption agency concerned shall satisfy themselves that there is no conflict of laws relating to adoption between Lesotho and the concerned receiving State.

The application for a passport on behalf of an adopted child must be accompanied by:

- (a) The chief's letter;
- (b) A supporting letter from next of kin or any other person who has knowledge of the child's birth (where it is possible), alternatively, a letter from the Ministry of Social Development;
- (c) Letter from the Ministry of Social Development in support of the request;
- (d) Child's report to the High Court;
- (e) Adoption court order;
- (f) Police clearance; and
- (g) Child's birth certificate or its equivalent.

Further, the responsible local adoption agency shall ensure that there should be no hindrance to the child leaving Lesotho or entering the country of his /her prospective adopter(s). The local adoption agency, working in close collaboration with the Passport Services Department, must ensure that travel documents especially the passports where needed are issued at the appropriate time.

## **2.10 Immigration requirements for prospective adoptive parents visiting Lesotho for bonding**

It shall be the responsibility of the Lesotho Intercountry Adoption Authority and responsible local adoption agency to ensure that entry of adoptive parents into Lesotho complies with existing immigration laws and regulations to enable completion of a successful bonding period as required by the CPWA 2011 regulations.

The bonding period for adoptive parents is 21 days and shall be supervised by social workers from the Ministry of Social Development or accredited local adoption agency.

The nominated social worker from Ministry of Social Development shall visit the adoptive parents for a minimum of three visits during the period of bonding.

In cases of intercountry adoption, this period shall provide adoptive parents from receiving countries the opportunity to familiarize themselves with the country, the culture and customs of Basotho.

### **2.11 VISA applications for prospective adoptive parents visiting Lesotho for bonding**

Where adoptive parents require a VISA, the relevant local adoption agency shall assist the prospective adoptive parents with necessary information and arrangements as may be required. It is therefore critical for adoption agencies to liaise closely with the Ministry of Foreign Affairs and Home Affairs prior to the arrival of the adoptive parents in Lesotho.

The Ministry of Foreign Affairs shall nominate a focal person to work closely with the Ministry of Social Development in all matters concerning intercountry adoption.

All Lesotho Embassies with Consular Services shall be informed when there are Basotho children adopted into countries within their jurisdiction.

### **2.12 Life Book**

The child has the right to his/her life story. As far as possible a Life Book, which may be presented in many forms, describing the background and other relevant information on the child should be prepared by the responsible social worker and accompany him/her on placement.

A responsible social worker from the Ministry of Social Development, or accredited local adoption agency, or child care facilities has to ensure that each child has a life book.

The child's life book shall be handed over to the adoptive parents at the signing-off ceremony on completion of the bonding period stipulated in the relevant regulations.

### **2.13 Right to identity**

The child has a right to his/her identity, in particular to information on his/her parentage. The Ministry of Social Development and accredited local adoption agencies shall ensure the satisfaction of this right and

### 3. ADOPTIVE PARENTS

offer psycho-social services to all parties concerned when a search for origins is undertaken.

#### 3.1 Criteria

Adoption mostly concerns children with a history of vulnerability that comes in the form of some form of abandonment, deprivation, neglect, abuse and exploitation or even orphaning. Often these children have been through traumatic experiences. They need adoptive families who are committed and caring and will offer an element of permanency and security to their lives.

In the case of intercountry adoption, in addition to a general capacity for adoptive parenthood, adoptive parent(s) shall have the capacity to handle the transracial, transcultural and transnational aspects of adoption.

#### 3.2 Approval

Prospective adoptive parent(s) must be approved and be given consent by the Ministry of Social Development and/or accredited local adoption agencies.

In the case of intercountry adoption, they must satisfy the requirements of the competent authorities of both the country of origin of a child and the receiving country concerned.

#### 3.3 Psycho-social services – screening and preparation

Providing psycho-social services to prospective adoptive parent(s) shall be the responsibility of the Ministry of Social Development or accredited local adoption agency. This shall include:

- a) Relevant information and support to decide whether adoption is the best plan for them after being made to understand that adoptive parenthood can involve tasks beyond biological parenthood;
- b) Advice on required procedures and documentation including appropriate sanctions against any charges of criminal offence and child abuse;
- c) Evaluation of their ability and potential to satisfy the needs of a child/children who require adoption including the acceptance of siblings, children with special needs etc., whenever relevant;
- d) Preparing adoptive parent(s) for the adoption e.g. arranging contact with adoptive families and adult adoptees if possible, etc.;

- e) Providing suitable information and arranging visits to sites of historical significance and cultural heritage and also exposing them to cultural events in order to help them to acquire ability to handle the transracial, transcultural and transnational aspects of adoption.
- f) Post adoption placement services and support to finalize the adoption;
- g) Assisting the applicant(s) with counselling and/or referral to other services if a decision has been taken that a child should not be placed with them.

### **3.4 Adoptive family home-study**

An adoptive family home-study must be made in the community where the applicant(s) are residing and shall be prepared by professionally qualified social workers or other experienced social service professionals recognized by the Lesotho Association of Social Workers to provide a dossier containing the following information:

- a) The basis on which the applicant(s) were accepted as prospective adopter(s);
- b) Assessment of their capacity to parent a particular child who may or may not be accustomed to family life;
- c) Relevant information for other authorities such as the courts.

The family home-study in the form of a detailed report shall provide at minimum the information as given in section 6 of this Chapter.

### **3.5 Declaration of adoptability of child**

The Ministry of Social Development shall ensure that a certificate of adoptability is issued to each prospective adoptive child before the matching can take place.

### **3.6 Knowledge about adoptee status and antecedents**

Adoptive parent(s) shall be made aware of the right of the child to know that he/she has been adopted and about his/her antecedents.

Adoptive parent(s) shall be offered counselling and other support services including contact with other adoptive families and adult adoptees to understand and support their adopted child if he/she decides to search for his/her roots.

### **3.7 Finalization of adoption**

Adoptive parent(s) shall be responsible for finalizing the legal adoption procedure as soon as possible.

*"State Parties that recognize and or/ permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration".*

*UN Convention on the Rights of the Child, Art. 21*

*"A contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities". A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so".*

*Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, Art 6 & 12*

#### **4.1 Accreditation**

Adoption arrangements should be made only through Ministry of Social Development, the Lesotho Intercountry Adoption Authority and or accredited local adoption agencies.

In the case of intercountry adoption, this will include the partner government authorities and non-governmental organizations in the respective receiving countries, i.e. contracting States.

The Government of Lesotho shall from time to time formulate policies, enact legislations and promulgate relevant regulations including penalties to deter prospective adoptive parent(s) and unaccredited persons from directly arranging adoptions.

#### **4.2 Personnel**

The Lesotho Intercountry Adoptions Authority or accredited local adoption agencies shall employ:

- a) A competent team of personnel with multidisciplinary professional qualifications. They would include professional social workers, psychologists, child and youth care workers, sociologists, educationists, lawyers, etc. with working experience in the field of child welfare and development and adoption in particular;
- b) Non-professional staff shall be supervised by such qualified workers.

#### **4.3 Adoption – a considered decision**

The Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall satisfy itself that:

- a) All alternatives to keep the child in his/her own family including the extended family have been explored;
- b) Adoption is the optimal choice of substitute care for the child.

#### **4.4. Placement in intercountry adoption**

In the case of intercountry adoption, the Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall ensure that:

- a) All alternatives for placing the child in a family in the district and Lesotho as a whole have been considered;
- b) Intercountry adoption is the next most favourable choice of care for the child.

#### **4.5. Legal requirements**

Before any adoption plan is considered, the Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall be responsible for establishing that:

- a) The child is legally free for adoption;
- b) Necessary documents are legally valid;
- c) In the case of intercountry adoption, the documents are legally valid in Lesotho, the child's country of origin and the receiving country and there is no conflict of laws adverse to the rights of the child.

#### **4.6. Intercountry adoption – routing of application**

An application to adopt shall not be considered by the Lesotho Intercountry Adoptions Authority unless it is forwarded through the competent adoptions authority or accredited local adoption agency in the receiving country.

#### **4.7. Matching**

The Ministry of Social Development shall devise a system to:

- a) Assess the needs of the child and that of the adoptive family;
- b) Match the needs of the child with the abilities and resources of the adoptive family particularly in cases of children with special needs;
- c) Prepare both the child and the adoptive family for the placement.

#### **4.8 Composition of the matching board**

The matching referred to under sub-section 4.7 above shall be the responsibility of a legally constituted matching board.

Membership of the matching board together with its mandate shall be as spelt out in the regulations of the CPWA 2011.

#### **4.9 District Support Team**

The Ministry of Social Development or local adoption agency shall utilize the services of a district support team to ensure the accomplishment of the goals of the placement.

#### **4.10 Preparation and presentation of adoption applications to the High Court**

In hearing applications for adoption, the High Court of Lesotho shall require -

- (a) A social inquiry report of a social worker of the Ministry of Social Development or accredited local adoption agency representing the best interests of a child in the matter.
- (b) The social worker as in (a) above to represent the best interests of the child by presenting the social inquiry report during the proceedings.

The Chief Justice shall ensure that designated judges are nominated in accordance with the High Court Rules to be promulgated to deal with adoption matters.

#### **4.11 Monitoring in the case of intercountry adoption**

The competent authorities and accredited local adoption agencies in both countries concerned shall monitor all procedures of an adoption. These shall include, ensuring among other details, that:

- a) The appropriate matching of a child with an adoptive family has been done in the best interests of the child;
- b) Costs involved in processing the adoption are reasonable and do not lead to profiteering and trafficking in children;
- c) The adoptive parents(s) comply with established procedures;
- d) All legal formalities to finalize the adoption are concluded at the earliest and not later than two years after placement.

Further it shall be the responsibility of the Lesotho Intercountry Adoptions Authority or accredited adoption agency to inform the competent authority or accredited local adoption agency in of the details of the adoption court order when it is granted.

#### **4.12. Post-placement supervision**

When a child is placed in adoption the competent authority or accredited adoption agency in the receiving country shall:

- a) Accept the responsibility for supervising the placement.

- b) Provide the necessary progress reports to the Lesotho Intercountry Adoptions Authority and/or accredited local adoption agency for the period agreed upon which shall comply with adoption laws and regulations of Lesotho.

#### **4.13. Disruption of an adoption placement**

If the placement is disrupted before the adoption is finalized, the Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall be responsible for ensuring that a satisfactory alternative placement is made.

In the case of intercountry adoption, the competent authority in the receiving State shall be responsible for arranging a satisfactory alternative placement and thereafter ensuring permanent legal status to the child. This shall be done in consultation with the Lesotho Intercountry Adoptions Authority.

#### **4.14. Search for origins of an adoptee**

The Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall preserve documents and records pertaining to every child for future reference.

In the case of intercountry adoption, the competent authority or accredited local adoption agencies in both countries shall bear this responsibility.

#### **4.15. Research Studies**

The Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agencies shall ensure that all documents are preserved and made accessible for research aimed at informing legislative and policy reform as well as relevant programming.

#### **4.16. Regulating accredited bodies**

- a) All accredited bodies must be submitted for accreditation and periodical surveillance by the Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agency.
- b) In the case of intercountry adoption, the accredited local adoption agency in Lesotho must be authorized by the competent authority of the receiving country and vice versa.

#### **4.17. Maintaining community links**

Adopted children may need contact with people of their origin as well as support of and acceptance by the adoptive family's community. The

competent authority or accredited local adoption agencies in Lesotho and the receiving country should support such efforts.

#### **4.18. Contact with other adoptive families and with other adopted children**

Adoptive parent(s) may need contact with other adoptive families and it should be provided by the Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agency.

Adoptees may in the same manner need contact with other adopted children. It shall therefore be the responsibility of the Ministry of Social Development, Lesotho Intercountry Adoptions Authority or accredited local adoption agency to ensure that opportunities are created for such contact.

#### **4.19. Costs and fees**

Only costs and expenses including reasonable professional fees for persons involved in the adoption may be charged or paid. This should be in accordance with adoption laws, regulations, policy and procedures and practice guidelines of Lesotho and receiving countries.

In cases of local adoptions, adoptive parents with insufficient financial means shall be guided to get the assistance of Legal Aid Services.

#### **4.20. Closure of accredited body**

In the event of the closure of an accredited local adoption agency, the Ministry of Social Development or Lesotho Intercountry Adoptions Authority shall have the responsibility to arrange for the transfer and preservation of documents and records to another competent authority or accredited adoption agency.

#### **4.21. Advocacy and publicity**

The Ministry of Social Development and Lesotho Intercountry Adoptions Authority or accredited local adoption agency shall:

- a) Be responsible for promoting a positive environment for upholding children's rights in adoption.
- b) Advocate for policies which give priority to permanent family alternatives for children who are deprived of their own family.
- c) Employ outreach measures to find families for children only with the consent of the Ministry responsible for children and the children themselves in accordance with their evolving capacity and degree of maturity.

## 5. CHILD STUDY

### ADOPTIVE FAMILY HOME-STUDY

The detailed report prepared by the Ministry of Social Development or local adoption agency on the child shall include, as far as possible, the following information on his/her background and needs:

1. Identifying information supported by documents where possible;
2. Child's recent photograph;
3. Child's antecedents including:
  - \* Given names and by whom they were given;
  - \* Detailed chronological placement history with dates and reasons for relocation;
  - \* Explicit reasons why the child was abandoned or relinquished.
4. Antecedents of the family or origin which would include:
  - \* Information about biological parents, siblings and extended family;
  - \* Family situation;
  - \* Race/ethnic background and religion;
  - \* Health history;
  - \* Details of mother's pregnancy and childbirth.
5. Physical, intellectual and emotional status of the child;
6. Medical report on the child's health status and health history (including periods of hospitalisation) to be appended;
7. Present environment, category of care (with birth family, foster home, institution etc.), relationships, routines, habits and behaviours. As far as possible, this information should be included in the Life Book;
8. Opinion of the child, having regard to his/her evolving capacity i.e. age and degree of maturity;
9. Assessment by a multidisciplinary support team of professionals (as far as possible) and their reasons for suggesting adoption and the qualification of a family most suitable to meet the child's needs.
10. In case intercountry adoption is considered the optimal choice of care, a justification for the same.

The prospective adoptive family will participate in the preparation of the home-study which at a minimum would include the following:

1. Identifying information supported by necessary documents such as marriage, divorce, birth certificates, etc.
2. Antecedents of the prospective adoptive family including:
  - \* Their own childhood experiences, upbringing and interpersonal relationships;
  - \* Information on other members of the family;
  - \* Attitude of children and other relatives of the adoptive family towards the adoption plan;
  - \* Social, ethno-cultural, linguistic and religious identity of the prospective adoptive family;
  - \* Sanctions against any charges of criminal offence and child abuse.
3. Recent photograph of the family;
4. Physical, intellectual, emotional and educational status of prospective adoptive family;
5. Medical report on the family's health status and health history;
6. Police clearance;
7. Employment and financial assets;
8. Accommodation and community environment;
9. Motivation to adopt;
10. Ability to provide nurturing care and supervision in an atmosphere of affection and moral and material security;
11. Statement of positive reference and emotional support from relatives, friends and community;
12. Assessment by a multidisciplinary support team of professionals (as far as possible) stating:
  - \* Their reasons for approving the prospective adoptive parent/s;
  - \* Details of the child (age, sex, acceptance of sibling, special needs child etc.) they would prefer to adopt and are capable of parenting.
13. In the case of intercountry adoption, capacity of the adoptive family to handle transracial, transcultural issues and the possible desire of the child to search for his/her roots.